

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARILYN GUTTIEREZ and ALEXIS HERNANDEZ,

Plaintiffs,

-against-

THE CITY OF NEW YORK, "JOHN DOE", and
"RICHARD ROE",

Defendants.
-----X

ANSWER

07 CV 6424 (HB)

JURY TRIAL DEMANDED

Defendant the City of New York (the "City"), by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the complaint.
2. Denies the allegations set forth in paragraph 2 of the complaint, except admits that the City of New York is a municipal corporation
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the complaint with respect to "John Doe" and "Richard Roe".
4. Denies the allegations set forth in paragraph 4 of the complaint, except admits that plaintiff purports to invoke the Court's jurisdiction as stated therein.
5. Denies the allegations set forth in paragraph 5 of the complaint, except admits that plaintiff purports that venue is proper.
6. Denies the allegations set forth in paragraph 6 of the complaint.
7. Denies the allegations set forth in paragraph 7 of the complaint.

8. Denies the allegations set forth in paragraph 8 of the complaint, except admits that Docket # 2006NY039409 was dismissed on July 16, 2007.

9. The allegations set forth in paragraph 9 constitute legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations.

10. Denies the allegations set forth in paragraph 10 of the complaint.

11. Denies the allegations set forth in paragraph 11 of the complaint.

12. Denies the allegations set forth in paragraph 12 of the complaint.

13. In response to the allegations set forth in paragraph 13 of the complaint, defendant repeat and realleges the responses set forth in paragraphs 1 through 12 inclusive of their answer, as if fully set forth herein.

14. Denies the allegations set forth in paragraph 14 of the complaint.

15. Denies the allegations set forth in paragraph 15 of the complaint.

16. Denies the allegations set forth in paragraph 16 of the complaint, except admits that Docket # 2006NY039351 was dismissed on July 16, 2007.

17. The allegations set forth in paragraph 17 constitute legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations.

18. Denies the allegations set forth in paragraph 18 of the complaint.

19. Denies the allegations set forth in paragraph 19 of the complaint.

20.

21. Denies the allegations set forth in paragraph 20 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

22. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

23. The City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

24. To the extent the complaint alleges any claims against the City arising under state law, such claims are barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

25. Punitive damages are not available against the City of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

26. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct and was not the proximate result of any act of the defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

27. There was reasonable suspicion to stop and detain plaintiffs.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

28. There was probable cause for plaintiffs' arrest, detention and prosecution.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

29. This action may be barred in whole or in part by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

30. This action may be barred in whole or in part by the applicable limitations period.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

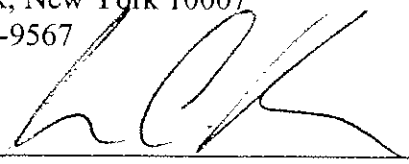
31. Plaintiff may have failed to comply with New York General Municipal Law § 50-e and accordingly, such claims may be barred.

WHEREFORE, defendant City of New York requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 9, 2007

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By:



Suzette Corinne Rivera (SR 4272)

TO: Gary Fish, Esq.